

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

CRIMINAL NO. 1: CR-02-236

v.

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ORUSTU B. BROWN

**MEMORANDUM AND ORDER**

Orustu Brown was sentenced by this court on May 20, 2003. Brown filed a notice of appeal on May 21, 2003. On April 28, 2004, the Third Circuit Court of Appeals issued a mandate affirming the judgment of conviction and sentence. Brown filed a petition for writ of certiorari to the United States Supreme Court which was denied on June 30, 2004. On June 14, 2005, Brown filed a motion pursuant to 28 U.S.C. § 2255 and a brief in support of that motion on August 15, 2005. The Government filed a response on September 2, 2005.

In his petition, Brown objects to the Chapter Four enhancements of the sentencing guidelines as they are in violation of *United States v. Booker*, 543 U.S. \_\_\_, 125 S. Ct. 738 (2005). In *Lloyd v. United States*, 407 F.3d 608 (3d Cir. 2005), the court held that “[b]ecause *Booker* announced a rule that is ‘new’ and ‘procedural,’ *Booker* does not apply retroactively to initial motions under § 2255 where the judgment was final as of January 12, 2005, the date *Booker* issued.” *Id.* At 615-616.

Brown's judgment was final as of June 30, 2004. **IT IS  
THEREFORE ORDERED THAT:**

- 1) The motion filed pursuant to 28 U.S.C. § 2255 is **DISMISSED**.
- 2) The Clerk of Court shall close the file.
- 3) This court declines to issue a certificate of appealability.

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s/Sylvia H. Rambo  
SYLVIA H. RAMBO  
United States District Judge

Dated: September 14, 2005.